

HR
2000

Chapter 8

S.B. No. 8

AN ACT

relating to the flexibility of the board of trustees of a school district in the management and operation of public schools in the district.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 21.0031, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) An employee's probationary, continuing, or term contract under this chapter is void if the employee:

(1) does not hold a valid certificate or permit issued by the State Board for Educator Certification; ~~[or]~~

(2) fails to fulfill the requirements necessary to renew or extend the employee's temporary, probationary, or emergency certificate or any other certificate or permit issued under Subchapter B; or

(3) fails to comply with any requirement under Subchapter C, Chapter 22, if the failure results in suspension or revocation of the employee's certificate under Section 22.0831(f)(2).

(b) If a school district has knowledge that an ~~[After an employee receives notice that the]~~ employee's contract is void under Subsection (a):

(1) the ~~[a school]~~ district may, except as provided by

1 Subsection (b-1):

2 (A) terminate the employee;

3 (B) suspend the employee with or without pay; or

4 (C) retain the employee for the remainder of the
5 school year on an at-will employment basis in a position other than
6 a position required to be held by an employee under a contract under
7 Section 21.002 [~~classroom teacher~~] at the employee's existing rate
8 of pay or at a reduced rate; and

9 (2) the employee is not entitled to the minimum salary
10 prescribed by Section 21.402.

11 (b-1) A school district may not terminate or suspend under
12 Subsection (b) an employee whose contract is void under Subsection
13 (a)(1) or (2) because the employee failed to renew or extend the
14 employee's certificate or permit if the employee:

15 (1) requests an extension from the State Board for
16 Educator Certification to renew, extend, or otherwise validate the
17 employee's certificate or permit; and

18 (2) not later than the 10th day after the date the
19 contract is void, takes necessary measures to renew, extend, or
20 otherwise validate the employee's certificate or permit, as
21 determined by the State Board for Educator Certification.

22 SECTION 2. Section 21.051, Education Code, is amended to
23 read as follows:

24 Sec. 21.051. RULES REGARDING FIELD-BASED EXPERIENCE AND
25 OPTIONS FOR FIELD EXPERIENCE AND INTERNSHIPS. (a) In this
26 section, "teacher of record" means a person employed by a school
27 district who teaches the majority of the instructional day in an

1 academic instructional setting and is responsible for evaluating
2 student achievement and assigning grades.

3 (b) Before a school district may employ a candidate for
4 certification as a teacher of record, the candidate must complete
5 at least 15 hours of field-based experience in which the candidate
6 is actively engaged in instructional or educational activities
7 under supervision at:

8 (1) a public school campus accredited or approved for
9 the purpose by the agency; or

10 (2) a private school recognized or approved for the
11 purpose by the agency.

12 (c) Subsection (b) applies only to an initial certification
13 issued on or after September 1, 2012. Subsection (b) does not
14 affect:

15 (1) the validity of a certification issued before
16 September 1, 2012; or

17 (2) the eligibility of a person who holds a
18 certification issued before September 1, 2012, to obtain a
19 subsequent renewal of the certification in accordance with board
20 rule.

21 (d) Subsection (b) does not affect the period within which
22 an individual must complete field-based experience hours as
23 determined by board rule if the individual is not accepted into an
24 educator preparation program before the deadline prescribed by
25 board rule and is hired for a teaching assignment by a school
26 district after the deadline prescribed by board rule.

27 (e) The board shall propose rules relating to the

1 field-based experience required by Subsection (b). The
2 commissioner by rule shall adopt procedures and standards for
3 recognizing a private school under Subsection (b)(2).

4 (f) The board shall propose rules providing flexible
5 options for persons for any field-based [~~field~~] experience or
6 internship required for certification.

7 SECTION 3. Subsection (a), Section 21.103, Education Code,
8 is amended to read as follows:

9 (a) The board of trustees of a school district may terminate
10 the employment of a teacher employed under a probationary contract
11 at the end of the contract period if in the board's judgment the
12 best interests of the district will be served by terminating the
13 employment. The board of trustees must give notice of its decision
14 to terminate the employment to the teacher not later than the 10th
15 [45th] day before the last day of instruction required under the
16 contract. The notice must be delivered personally by hand delivery
17 to the teacher on the campus at which the teacher is employed,
18 except that if the teacher is not present on the campus on the date
19 that hand delivery is attempted, the notice must be mailed by
20 prepaid certified mail or delivered by express delivery service to
21 the teacher's address of record with the district. Notice that is
22 postmarked on or before the 10th day before the last day of
23 instruction is considered timely given under this subsection. The
24 board's decision is final and may not be appealed.

25 SECTION 4. Subsection (b), Section 21.104, Education Code,
26 is amended to read as follows:

27 (b) In lieu of discharge or pending discharge, a school

1 district may suspend a teacher without pay for good cause as
2 specified by Subsection (a) for a period not to extend beyond the
3 end of the current school year.

4 SECTION 5. Subchapter C, Chapter 21, Education Code, is
5 amended by adding Section 21.1041 to read as follows:

6 Sec. 21.1041. HEARING UNDER PROBATIONARY CONTRACT. A
7 teacher is entitled to:

8 (1) a hearing as provided by Subchapter F, if the
9 teacher is protesting proposed action under Section 21.104; or

10 (2) a hearing in a manner provided under Section
11 21.207 for nonrenewal of a term contract or a hearing provided by
12 Subchapter F, as determined by the board of trustees of the
13 district, if the teacher is protesting proposed action to terminate
14 a probationary contract before the end of the contract period on the
15 basis of a financial exigency declared under Section 44.011 that
16 requires a reduction in personnel.

17 SECTION 6. Subsection (b), Section 21.156, Education Code,
18 is amended to read as follows:

19 (b) In lieu of discharge or pending discharge, a school
20 district may suspend a teacher without pay for good cause as
21 specified by Subsection (a) for a period not to extend beyond the
22 end of the current school year.

23 SECTION 7. Section 21.157, Education Code, is amended to
24 read as follows:

25 Sec. 21.157. NECESSARY REDUCTION OF PERSONNEL. A teacher
26 employed under a continuing contract may be released at the end of a
27 school year and the teacher's employment with the school district

S.B. No. 8

1 terminated at that time because of a necessary reduction of
2 personnel by the school district, with those reductions made
3 primarily based upon teacher appraisals administered under Section
4 21.352 [in the reverse order of seniority] in the specific teaching
5 fields and other criteria as determined by the board.

6 SECTION 8. Subsection (b), Section 21.159, Education Code,
7 is amended to read as follows:

8 (b) A teacher who notifies the board of trustees within the
9 time prescribed by Subsection (a) is entitled to:

10 (1) a hearing as provided by Subchapter F, if the
11 teacher is protesting proposed action under Section 21.156; or

12 (2) a hearing in a manner provided under Section
13 21.207 for nonrenewal of a term contract or a hearing provided by
14 Subchapter F, as determined by the board, if the teacher is
15 protesting proposed action under Section 21.157 or proposed action
16 to terminate a term contract at any time on the basis of a financial
17 exigency declared under Section 44.011 that requires a reduction in
18 personnel.

19 SECTION 9. Subsection (a), Section 21.206, Education Code,
20 is amended to read as follows:

21 (a) Not later than the 10th [45th] day before the last day of
22 instruction in a school year, the board of trustees shall notify in
23 writing each teacher whose contract is about to expire whether the
24 board proposes to renew or not renew the contract. The notice must
25 be delivered personally by hand delivery to the teacher on the
26 campus at which the teacher is employed, except that if the teacher
27 is not present on the campus on the date that hand delivery is

S.B. No. 8

1 attempted, the notice must be mailed by prepaid certified mail or
2 delivered by express delivery service to the teacher's address of
3 record with the district. Notice that is postmarked on or before
4 the 10th day before the last day of instruction is considered timely
5 given under this subsection.

6 SECTION 10. Section 21.207, Education Code, is amended by
7 amending Subsections (a) and (c) and adding Subsection (b-1) to
8 read as follows:

9 (a) If the teacher desires a hearing after receiving notice
10 of the proposed nonrenewal, the teacher shall notify the board of
11 trustees in writing not later than the 15th day after the date the
12 teacher receives hand delivery of the notice of the proposed
13 action, or if the notice is mailed by prepaid certified mail or
14 delivered by express delivery service, not later than the 15th day
15 after the date the notice is delivered to the teacher's address of
16 record with the district. The board shall provide for a hearing to
17 be held not later than the 15th day after the date the board
18 receives the request for a hearing unless the parties agree in
19 writing to a different date. The hearing must be closed unless the
20 teacher requests an open hearing.

21 (b-1) Notwithstanding any other provision of this code,
22 this subsection applies only to a school district with an
23 enrollment of at least 5,000 students. The board of trustees may
24 designate an attorney licensed to practice law in this state to hold
25 the hearing on behalf of the board, to create a hearing record for
26 the board's consideration and action, and to recommend an action to
27 the board. The attorney serving as the board's designee may not be

S.B. No. 8

1 employed by a school district and neither the designee nor a law
2 firm with which the designee is associated may be serving as an
3 agent or representative of a school district, of a teacher in a
4 dispute between a district and a teacher, or of an organization of
5 school employees, school administrators, or school boards of
6 trustees. Not later than the 15th day after the completion of the
7 hearing under this subsection, the board's designee shall provide
8 to the board a record of the hearing and the designee's
9 recommendation of whether the contract should be renewed or not
10 renewed. The board shall consider the record of the hearing and the
11 designee's recommendation at the first board meeting for which
12 notice can be posted in compliance with Chapter 551, Government
13 Code, following the receipt of the record and recommendation from
14 the board's designee, unless the parties agree in writing to a
15 different date. At the meeting, the board shall consider the
16 hearing record and the designee's recommendation and allow each
17 party to present an oral argument to the board. The board by
18 written policy may limit the amount of time for oral argument. The
19 policy must provide equal time for each party. The board may obtain
20 advice concerning legal matters from an attorney who has not been
21 involved in the proceedings. The board may accept, reject, or
22 modify the designee's recommendation. The board shall notify the
23 teacher in writing of the board's decision not later than the 15th
24 day after the date of the meeting.

25 (c) At the hearing before the board or the board's designee,
26 the teacher may:

27 (1) be represented by a representative of the

S.B. No. 8

1 teacher's choice;

2 (2) hear the evidence supporting the reason for
3 nonrenewal;

4 (3) cross-examine adverse witnesses; and

5 (4) present evidence.

6 SECTION 11. Section 21.212, Education Code, is amended by
7 adding Subsection (f) to read as follows:

8 (f) On the basis of a financial exigency declared under
9 Section 44.011 that requires a reduction in personnel, the board of
10 trustees of a school district may choose to amend the terms of the
11 contract of a superintendent employed under a term contract. A
12 superintendent whose contract is amended under this subsection may
13 resign without penalty by providing reasonable notice to the board
14 and may continue employment for that notice period under the prior
15 contract.

16 SECTION 12. Section 21.251, Education Code, is amended to
17 read as follows:

18 Sec. 21.251. APPLICABILITY. (a) This subchapter applies
19 if a teacher requests a hearing after receiving notice of the
20 proposed decision to:

21 (1) terminate the teacher's continuing contract at any
22 time, except as provided by Subsection (b)(3);

23 (2) terminate the teacher's probationary or term
24 contract before the end of the contract period, except as provided
25 by Subsection (b)(3); or

26 (3) suspend the teacher without pay.

27 (b) This subchapter does not apply to:

1 (1) a decision to terminate a teacher's employment at
2 the end of a probationary contract; [~~or~~]

3 (2) a decision not to renew a teacher's term contract,
4 unless the board of trustees of the employing district has decided
5 to use the process prescribed by this subchapter for that purpose;
6 or

7 (3) a decision, on the basis of a financial exigency
8 declared under Section 44.011 that requires a reduction in
9 personnel, to terminate a probationary or term contract before the
10 end of the contract period or to terminate a continuing contract at
11 any time, unless the board of trustees has decided to use the
12 process prescribed by this subchapter for that purpose.

13 SECTION 13. Section 21.257, Education Code, is amended by
14 adding Subsection (a-1) to read as follows:

15 (a-1) A determination by the hearing examiner regarding
16 good cause for the suspension of a teacher without pay or the
17 termination of a probationary, continuing, or term contract is a
18 conclusion of law and may be adopted, rejected, or changed by the
19 board of trustees or board subcommittee as provided by Section
20 21.259(b).

21 SECTION 14. Subsection (b), Section 21.259, Education Code,
22 is amended to read as follows:

23 (b) The board of trustees or board subcommittee may adopt,
24 reject, or change the hearing examiner's:

25 (1) conclusions of law, including a determination
26 regarding good cause for suspension without pay or termination; or

27 (2) proposal for granting relief.

S.B. No. 8

SECTION 15. Subsection (a), Section 21.402, Education Code, is amended to read as follows:

(a) Except as provided by Subsection ~~[(d)]~~ (e) ~~[(7)]~~ or (f), a school district must pay each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse not less than the minimum monthly salary, based on the employee's level of experience in addition to other factors, as determined by commissioner rule, determined by the following formula:

$$MS = SF \times FS$$

where:

"MS" is the minimum monthly salary;

"SF" is the applicable salary factor specified by Subsection (c); and

"FS" is the amount, as determined by the commissioner under Subsection (b), of state and local funds per weighted student, including funds provided under Section 42.2516, available to a district eligible to receive state assistance under Section 42.302 with a maintenance and operations tax rate per \$100 of taxable value equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by \$1.50, except that the amount of state and local funds per weighted student does not include the amount attributable to the increase in the guaranteed level made by Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 16. Subchapter I, Chapter 21, Education Code, is amended by adding Sections 21.4021, 21.4022, and 21.4032 to read as

1 follows:

2 Sec. 21.4021. FURLOUGHS. (a) Notwithstanding Section
3 21.401 and subject to Section 21.4022, the board of trustees of a
4 school district may, in accordance with district policy, implement
5 a furlough program and reduce the number of days of service
6 otherwise required under Section 21.401 by not more than six days of
7 service during a school year if the commissioner certifies in
8 accordance with Section 42.009 that the district will be provided
9 with less state and local funding for that year than was provided to
10 the district for the 2010-2011 school year.

11 (b) Notwithstanding Section 21.402, the board of trustees
12 may reduce the salary of an employee who is furloughed in proportion
13 to the number of days by which service is reduced, provided that the
14 furlough program is implemented in compliance with this section.

15 (b-1) A furlough program must subject all contract
16 personnel to the same number of furlough days.

17 (c) An educator may not be furloughed on a day that is
18 included in the number of days of instruction required under
19 Section 25.081.

20 (d) An educator may not use personal, sick, or any other
21 paid leave while the educator is on a furlough.

22 (e) A furlough imposed under this section does not
23 constitute a break in service for purposes of the Teacher
24 Retirement System of Texas. A furlough day does not constitute a
25 day of service for purposes of the Teacher Retirement System of
26 Texas.

27 (f) Implementation of a furlough program may not result in

1 an increase in the number of required teacher workdays.

2 (g) If a board of trustees adopts a furlough program after
3 the date by which a teacher must give notice of resignation under
4 Section 21.105, 21.160, or 21.210, as applicable, a teacher who
5 subsequently resigns is not subject to sanctions imposed by the
6 State Board for Educator Certification as otherwise authorized by
7 those sections.

8 (h) A decision by the board of trustees to implement a
9 furlough program:

10 (1) is final and may not be appealed; and

11 (2) does not create a cause of action or require
12 collective bargaining.

13 (i) Any reduction under this section in the amount of the
14 annual salary paid to an employee must be equally distributed over
15 the course of the employee's current contract with the school
16 district.

17 Sec. 21.4022. REQUIRED PROCESS FOR DEVELOPMENT OF FURLOUGH
18 PROGRAM OR OTHER SALARY REDUCTION PROPOSAL. (a) The board of
19 trustees of a school district may not implement a furlough program
20 under Section 21.4021 or reduce salaries until the district has
21 complied with this section.

22 (b) A school district must use a process to develop a
23 furlough program or other salary reduction proposal, as applicable,
24 that:

25 (1) includes the involvement of the district's
26 professional staff; and

27 (2) provides district employees with the opportunity

S.B. No. 8

1 to express opinions regarding the furlough program or salary
2 reduction proposal, as applicable, at the public meeting required
3 by Subsection (c).

4 (c) The board of trustees must hold a public meeting at
5 which the board and school district administration present:

6 (1) information regarding the options considered for
7 managing the district's available resources, including
8 consideration of a tax rate increase and use of the district's
9 available fund balance;

10 (2) an explanation of how the district intends,
11 through implementation of a furlough program under Section 21.4021
12 or through other salary reductions, as applicable, to limit the
13 number of district employees who will be discharged or whose
14 contracts will not be renewed; and

15 (3) information regarding the local option residence
16 homestead exemption.

17 (d) Any explanation of a furlough program under Subsection
18 (c)(2) must state the specific number of furlough days proposed to
19 be required.

20 (e) The public and school district employees must be
21 provided with an opportunity to comment at the public meeting
22 required under Subsection (c).

23 Sec. 21.4032. REDUCTIONS IN SALARIES OF CLASSROOM TEACHERS
24 AND ADMINISTRATORS. (a) This section applies only to a widespread
25 reduction in the amount of the annual salaries paid to school
26 district classroom teachers based primarily on district financial
27 conditions rather than on teacher performance.

S.B. No. 8

1 (b) For any school year in which a school district has
2 reduced the amount of the annual salaries paid to district
3 classroom teachers from the amount paid for the preceding school
4 year, the district shall reduce the amount of the annual salary paid
5 to each district administrator or other professional employee by a
6 percent or fraction of a percent that is equal to the average
7 percent or fraction of a percent by which teacher salaries have been
8 reduced.

9 SECTION 17. Subsection (a), Section 38.101, Education Code,
10 is amended to read as follows:

11 (a) Except as provided by Subsection (b), a school district
12 annually shall assess the physical fitness of students enrolled in
13 grade three or higher in a course that satisfies the curriculum
14 requirements for physical education under Section 28.002(a)(2)(C)
15 [grades 3 through 12].

16 SECTION 18. Subchapter A, Chapter 42, Education Code, is
17 amended by adding Section 42.009 to read as follows:

18 Sec. 42.009. DETERMINATION OF FUNDING LEVELS. (a) Not
19 later than July 1 of each year, the commissioner shall determine for
20 each school district whether the estimated amount of state and
21 local funding per student in weighted average daily attendance to
22 be provided to the district under the Foundation School Program for
23 maintenance and operations for the following school year is less
24 than the amount provided to the district for the 2010-2011 school
25 year. If the amount estimated to be provided is less, the
26 commissioner shall certify the percentage decrease in funding to be
27 provided to the district.

S.B. No. 8

1 (b) In making the determinations regarding funding levels
2 required by Subsection (a), the commissioner shall:

3 (1) make adjustments as necessary to reflect changes
4 in a school district's maintenance and operations tax rate;

5 (2) for a district required to take action under
6 Chapter 41 to reduce its wealth per student to the equalized wealth
7 level, base the determinations on the district's net funding levels
8 after deducting any amounts required to be expended by the district
9 to comply with Chapter 41; and

10 (3) determine a district's weighted average daily
11 attendance in accordance with this chapter as it existed on January
12 1, 2011.

13 SECTION 19. Subchapter A, Chapter 44, Education Code, is
14 amended by adding Section 44.011 to read as follows:

15 Sec. 44.011. FINANCIAL EXIGENCY. (a) The board of
16 trustees of a school district may adopt a resolution declaring a
17 financial exigency for the district. The declaration expires at
18 the end of the fiscal year during which the declaration is made
19 unless the board adopts a resolution before the end of the fiscal
20 year declaring continuation of the financial exigency for the
21 following fiscal year.

22 (b) The board is not limited in the number of times the board
23 may adopt a resolution declaring continuation of the financial
24 exigency.

25 (c) A board may terminate a financial exigency declaration
26 at any time if the board considers it appropriate.

27 (d) Each time the board adopts a resolution under this

S.B. No. 8

1 section, the board must notify the commissioner. The commissioner
2 by rule shall prescribe the time and manner in which notice must be
3 given to the commissioner under this subsection.

4 (e) The commissioner by rule shall adopt minimum standards
5 concerning school district financial conditions that must exist for
6 declaration of a financial exigency by the board of trustees of the
7 district.

8 (f) The commissioner may use emergency rulemaking
9 procedures to adopt rules under Subsection (e). This subsection
10 expires September 1, 2013.

11 SECTION 20. Subchapter F, Chapter 552, Government Code, is
12 amended by adding Section 552.2661 to read as follows:

13 Sec. 552.2661. CHARGE FOR COPY OF PUBLIC INFORMATION
14 PROVIDED BY SCHOOL DISTRICT. A school district that receives a
15 request to produce public information for inspection or publication
16 or to produce copies of public information in response to a
17 requestor who, within the preceding 180 days, has accepted but
18 failed to pay written itemized statements of estimated charges from
19 the district as provided under Section 552.261(b) may require the
20 requestor to pay the estimated charges for the request before the
21 request is fulfilled.

22 SECTION 21. The following provisions of the Education Code
23 are repealed:

- 24 (1) Section 12.1331;
25 (2) Subsection (d), Section 21.402; and
26 (3) Subsections (b) and (c), Section 33.902.

27 SECTION 22. On or before January 1, 2012, the State Board

S.B. No. 8

1 for Educator Certification shall propose rules relating to educator
2 certification as prescribed by Section 21.051, Education Code, as
3 amended by this Act.

4 SECTION 23. The changes in law made by this Act apply only
5 to a hearing examiner's determination regarding good cause that is
6 contained in a written recommendation under Section 21.257,
7 Education Code, issued on or after the effective date of this Act.

8 SECTION 24. This Act takes effect immediately if it
9 receives a vote of two-thirds of all the members elected to each
10 house, as provided by Section 39, Article III, Texas Constitution.
11 If this Act does not receive the vote necessary for immediate
12 effect, this Act takes effect on the 91st day after the last day of
13 the legislative session.

David Newkirk
President of the Senate

Joe Straus
Speaker of the House

I hereby certify that S.B. No. 8 passed the Senate on June 6, 2011, by the following vote: Yeas 18, Nays 12; June 20, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; June 21, 2011, House granted request of the Senate; June 27, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 19, Nays 11.

Patry Spaw
Secretary of the Senate

I hereby certify that S.B. No. 8 passed the House, with amendments, on June 16, 2011, by the following vote: Yeas 88, Nays 55, one present not voting; June 21, 2011, House granted request of the Senate for appointment of Conference Committee; June 27, 2011, House adopted Conference Committee Report by the following vote: Yeas 80, Nays 63, one present not voting.

Robert Haney
Chief Clerk of the House

Approved:

19 JUL '11
Date

RICK PERRY
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:00pm O'CLOCK

Colby Hunter III
Secretary of State